demonstrated that it has met all its obligations . . . ."[221]

The Attorney General's concerns on this point are unfounded. We have already

demonstrated in our Evaluation that the hot cut scoring issue is resolved. As we stated in our

earlier comments, the Department was unable to categorize or "score" only three of the 36

orders for which AT&T provided documentation. The Department did agree with AT&T that

VZ-MA mis-scored six of the 36 orders, but AT&T had earlier claimed that all 36 orders were

mis-scored by VZ-MA and that AT&T's data was "absolutely clear and unambiguous" on that

point.[222] While the Attorney General argues that it is unclear whether VZ-MA's reported hot

cut performance is accurate, the Department's data reconciliation demonstrates that VZ-MA's

reported performance is sufficiently accurate, even for the time period prior to the improved

collaboration between VZ-MA and AT&T. As we explained in our Evaluation, since May

2000, VZ-MA provides a weekly hot cut "scorecard" to AT&T so that there can be no doubt

about whether VZ-MA considers a particular hot cut to have been "made" or "missed."[223] We

reiterate that there is no need for further hot cut reconciliation and that VZ-MA's scoring is

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[221]   Attorney General Comments at 7-8.

[222]   See D.T.E. Evaluation at 288. In our Evaluation, the Department indicated that AT&T
         has not presented orders placed this year to support AT&T's claim that VZ-MA is mis-
         scoring its hot cut performance. Id. at 287. That statement was incorrect. Of the 36
         orders AT&T asked the Department to reconcile, 15 were from January and February,
         2000.

[223]   Id. at 287.

reliable.

2. xDSL-Capable Loops[224]

a. Installation Timeliness

i. Discussion

Covad argues that, in contrast to the performance data presented to the FCC for Texas (where SWBT provided on-time xDSL service for 93.5 percent of its retail customer orders and 92.3 percent of its CLEC customer orders), VZ-MA's July data show that it provisions xDSL loops to CLECs within the six-day interval only half of the time (but over 80 percent of the time for VZ-MA's retail xDSL service).[225] According to Covad, this six-day metric was developed through a collaborative process, but VZ-MA attempts to explain away its poor performance by unilaterally changing what it measures, and by producing its own study indicating that this metric is skewed by CLECs selecting VZ-MA's manual loop qualification process.[226]

According to Covad, it is impossible for it to refute the VZ-MA study because VZ-MA has refused to provide disaggregated loop data to Covad and other CLECs. Moreover, Covad

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[224] The Department discusses xDSL issues related to VZ-MA's mechanized loop qualification database and line sharing order flow-through in Sections II.B.1.d and e, above.

[225] Covad Comments at 11-12, citing SBC Texas Order at ¶ 297 n.830.

[226] Covad Comments at 12-13, citing metric PR-3-10.

disputes VZ-MA's contention that approximately 50 percent of CLEC loop orders request

manual loop qualification because Covad contends that it uses this process for less than 15

percent of its orders.[227] Lastly, Covad disagrees with VZ-MA's assertion that CLECs miscode

their LSRs by marking that an order is to be manually qualified when it is not. Without any

record information provided by VZ-MA, Covad states that it is difficult to respond to VZ-

MA's miscoding contention.[228]

The Department is not persuaded by Covad's attempt to compare one provisioning

performance metric in SWBT's § 271 application, Percent SWBT Caused Missed Due Dates,

with an altogether different VZ-MA provisioning metric, Percent Completed in 6 Days (1-5

lines). The appropriate "apples to apples" comparison would be the Percent SWBT Caused

Missed Due Dates with VZ-MA's Percent Missed Appointment, which, as we noted in our

Evaluation, captures any order that, because of VZ-MA's fault, was not completed by the due

date to which VZ-MA committed.[229] In July, for example, VZ-MA met 96.6 percent of its

installation appointments for CLEC xDSL orders and 97.96 percent of its own retail xDSL

orders. In July 2000, VZ-MA met more of its due dates for xDSL service (for both CLECs

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[227]   Id. at 13-14.

[228]   Id. at 14.

[229]   D.T.E. Evaluation at 260-261.

and itself) than did SWBT in the month cited by Covad (March 2000).[230]

As we mentioned in our Evaluation, VZ-MA did not present in D.T.E. 99-271 the results of its study about the effect of pre-qualified versus manual loop qualification orders on its average interval metrics. Therefore, we will not comment on the substance of this study nor Covad's criticism of it. Covad argues several times in its comments that it is unable to refute VZ-MA's performance claims because VZ-MA has failed to provide Covad and other CLECs with CLEC-specific data for Massachusetts. Until we read Covad's FCC comments, we were unaware that this lack of CLEC-specific data posed a hindrance to Covad because Covad never raised this issue during our proceeding. Indeed, the only requests made to VZ-MA for CLEC-specific information for non-hot cut loops during this year's § 271 proceeding came from the Department; and we heard nothing about the matter from Covad until its October 16 comments.[231]

Like Covad, Rhythms also argues that VZ-MA's failure to provide carrier-specific reports is a serious problem and questions how VZ-MA will be able to calculate its performance for individual CLECs each month pursuant to the Performance Assurance Plan

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[230]   Covad Comments at 11; D.T.E. Evaluation at 300 n.949.

[231]   VZ-MA Application, Appdx. B, Vol. 34c, Tab 443 (VZ-MA Response to Information Request DTE 5-13); VZ-MA Application, Appdx. B, Vol. 45, Tab 520 at 4320-4321 (Transcript of Technical Session Held 8/17/00)

("PAP").[232] Moreover, Rhythms contends that the information provided by VZ-MA to support its claim of excellent on-time performance for xDSL loops fails to account for VZ-MA's practice of asking CLECs to re-submit their LSRs if VZ-MA is unable to meet the established due date. According to Rhythms, this VZ-MA request restarts the clock and, thus, overstates VZ-MA's on-time provisioning record.[233]

In addition, Rhythms argues that VZ-MA's claim that the CLEC practice of requesting manual loop qualifications adversely affects its performance results is misleading. According to Rhythms, it must occasionally use this manual process because VZ-MA's mechanized database is not populated with all the necessary information in order for Rhythms to determine whether it can provide service to a particular customer.[234] Rhythms also states that VZ-MA has not developed a pre-order interface to allow CLECs to submit manual loop qualification queries before submitting an order. Therefore, Rhythms contends that CLECs have no choice but to submit an LSR for the actual order to request VZ-MA to perform a manual query.[235]

We note that Rhythms, too, failed to raise the issue of CLEC-specific information

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[232] Rhythms Comments at 28-29.

[233] Id. at 30, citing VZ-MA Application, Appdx. A, Tab 3, Attach. M (Guerard/Canny Decl.).

[234] Id. at 34.

[235] Id.

before the Department.[236] Though Rhythms argues that VZ-MA has refused to provide it with

CLEC-specific data, we note that VZ-MA will provide carriers that include the Department's

Consolidated Arbitrations performance standards in their interconnection agreements with a

copy of their so-called "flat file." This file contains detailed information about that carrier's

orders for the previous month. Some carriers, such as AT&T, do receive this file. The

Department notes that once our PAP is effective, carriers like Covad and Rhythms (that have

chosen not to opt-in to the Consolidated Arbitrations performance standards) will receive

carrier-specific data, too. Rhythms also raises the issue of VZ-MA asking it and other CLECs

to resubmit their LSRs when it appeared VZ-MA was unable to meet a due date (which,

according to Rhythms, overstates VZ-MA's provisioning metrics), for the first time in its FCC

comments. Rhythms failed to present this issue before the Department, and has not attempted

to quantify the frequency of this alleged VZ-MA practice.[237] Therefore, we are unable to

comment upon it.

NAS argues that, from January through July 2000, VZ-MA took an average of 16

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[236]   Rhythms indicates that it and other CLECs requested this information from VZ-MA
during the "state proceeding." See id. at 33. However, the Department has no record
of any CLEC's (other than AT&T's) request for carrier-specific reports.

[237]   The only carrier to make a similar allegation, that VZ-MA asked a carrier to resubmit
or supplement a particular order, during our § 271 investigation was AT&T. AT&T
only made this claim in the context of hot cuts (specifically, "customer not ready"),
which was addressed to the Department's satisfaction by VZ-MA. VZ-MA
Application, Appdx. B, Vol. 46, Tab 533 at 4431, 4520-4521 (Transcript of Technical
Session Held 8/21/00).

business days to install NAS's stand-alone xDSL loops (measured from the time the loop is

ordered to the time that a working loop is installed).[238] To remedy this problem, NAS

proposes several revisions to VZ-MA's provisioning process (e.g., a two-hour window for the

VZ-MA technician's installation visit; add a "shorting block or a hardwired loopback at the

termination on the end user's premises"; improve the accuracy of the mechanized loop

qualification database; agree to cooperative testing).[239] As noted at the beginning of our

comments, NAS did not participate in our § 271 proceeding. NAS makes several claims in its

FCC comments about VZ-MA's xDSL loop provisioning performance -- claims that the

Department is hearing for the first time. Since NAS failed to produce documentation

supporting its claims to the Department, we are unable to comment upon the validity of NAS's

assertions.

Digital Broadband argues that from June through mid-September, 2000, it received the

six-day interval for its xDSL loop orders only 33.8 percent of the time.[240] According to

Digital Broadband, when VZ-MA's offered due-date exceeded the six-day standard, it did so

by a large margin (e.g., 15.8 percent of orders had due dates two weeks beyond the stated

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[238]   NAS Comments at 2.

[239]   Id. at 3-6.

[240]   ALTS Comments, Melanson Decl. at ¶ 19.

interval, 21.5 percent of orders received due dates three weeks beyond this interval).[241]

Because Digital Broadband failed to provide this information to the Department during our

§ 271 proceeding, we are unable to comment upon it.

Finally, the DOJ asks us to clarify to what extent, if any, we relied upon VZ-MA's

studies of plain old telephone service ("POTS") lines to make inferences about VZ-MA's

xDSL performance; and newly implemented, but yet unproven, process improvements

including the enhanced mechanized database, cooperative testing procedures, and substitutes

for copper facilities.[242]

ii.   Conclusions

We affirm our findings contained in our Evaluation: VZ-MA provisions xDSL loops to

CLECs when CLECs request them. While Covad makes much of one provisioning metric,

PR-3-10, we find it significant that it does not dispute VZ-MA's assertion that Covad receives

loops by the Covad-requested due date. Covad argues that it is unable to refute VZ-MA's

assertions with respect to several VZ-MA studies because VZ-MA has refused to provide

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[241]   Id. at ¶ 20.

[242]   DOJ Evaluation at 8 n.30. The DOJ also questioned whether in our conclusions about
VZ-MA's xDSL provisioning performance, we relied upon Covad's statement made
during the oral argument that its xDSL market share in Massachusetts is greater than
VZ-MA's. Id. We did not -- in fact Covad has not provided its xDSL market share in
Massachusetts to the Department. However, as indicated in our Evaluation, it is
unmistakably clear that CLEC xDSL orders are increasing: from March through June
2000, VZ-MA completed over 7,000 orders for unbundled xDSL loops. By August,
that number had increased to over 13,000 orders. D.T.E. Evaluation at 254.

Covad and other CLECs with carrier-specific data. Neither Covad nor Rhythms mentioned

any VZ-MA refusal to provide CLEC-specific data in our § 271 proceeding (or in any other

Department proceeding). Likewise, the other provisioning-specific complaints raised by

Rhythms, NAS, and Digital Broadband were never presented before the Department.

In response to the DOJ's concern that we may have relied upon a VZ-MA study of

POTS lines to support our finding that VZ-MA provisions xDSL loops to CLECs when they

request them, we note that in its May measurements affidavit, VZ-MA discussed a study of

randomly selected xDSL orders from January and February 2000.[243] The Department

requested and received the supporting documentation for this study, which indicates that for

xDSL orders requiring a dispatch, CLECs miscoded approximately 30 percent of their

orders.[244] That is, for approximately 30 percent of the orders, CLECs requested longer than

the stated interval but neglected to code those orders with an "X" instead of a "W."[245] The

Department expects this clarification, which we neglected to make explicit in our Evaluation,

will resolve any of the DOJ's concerns about any inappropriate reliance on VZ-MA's POTS

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[243] VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 70 (VZ-MA May Measurements Aff.).

[244] VZ-MA Application, Appdx. B, 34c, Tab 443 (VZ-MA Response to Information Request DTE 5-30). In January, CLECs miscoded 28.6 percent of their xDSL orders and in February, CLECs miscoded 32.6 percent of their xDSL orders.

[245] See VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 67 (VZ-MA May Measurements Aff.) for additional discussion of the miscoding issue.

studies.

The DOJ also sought clarification from the Department about our reliance upon "yet unproven" VZ-MA process improvements (e.g., the enhanced mechanized loop database, cooperative testing procedures, and substitutes for copper facilities).[246] VZ-MA unveiled its enhanced mechanized loop qualification database earlier this year. As stated in our Evaluation, to date, VZ-MA has populated this database with over 90 percent of the Massachusetts central offices where there is a collocation arrangement in place.[247] While we mentioned that the Department approved VZ-MA's proposed tariff language for the mechanized database as part of our Phase III Order,[248] that does not mean the information contained in the enhanced database (i.e., information beyond a simple "yes/no ADSL-capable") was not already available to CLECs. It was. The record from our Phase III Order is clear on that point.[249] Therefore, to clarify statements made in our Evaluation, VZ-MA's enhanced mechanized database is not unproven – CLECs have been using this database, with its enhanced capability, for months.

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[246]   DOJ Evaluation at 8 n.30.

[247]   D.T.E. Evaluation at 292.

[248]   Id. at 295 n.937.

[249]   See VZ-MA Application, Appdx. E, Vol. 24, Tab 406, at 488-497 (Transcript of D.T.E. 98-57-Phase III Evidentiary Hearing Held 8/2/00); VZ-MA Application, Appdx. E, Vol. 22, Tab 387 (VZ-MA Response to Information Request DTE 1-31); VZ-MA Application, Appdx. B, Vol. 22, Tab 393 (VZ-MA Response to Information Request DTE 1-35).

As noted by VZ-MA and Covad, the cooperative testing procedures for xDSL loop

provisioning between Verizon and CLECs were established last year as part of the New York

collaborative.[250] These procedures, which are neither new nor unproven, went uncontested in

D.T.E 99-271; thus, we have no record to support "eleventh hour" claims that such

cooperative testing is not successful.[251] Finally, the DOJ is correct that the Department

recently approved VZ-MA's proposed tariffed language on line and station transfers ("LSTs")

and directed VZ-MA to file proposed tariff offerings to facilitate line sharing over fiber-fed

loops.[252] The Department mentioned these options as reasonable solutions to the "no facilities"

situation raised by Covad. While the Department's action, taken in our Phase III Order, with

respect to these options is recent (i.e., directing VZ-MA to perform LSTs upon CLEC request

for both stand-alone and line-shared loops), VZ-MA performed LSTs, also known as pair

swaps, for xDSL stand-alone loops prior to the issuance of this Order; therefore, this process

is also not unproven.[253] Moreover, the Department has no record of complaints about VZ-

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[250]   VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 108 (VZ-MA August
         Supplemental Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at
         4371-4372 (Transcript of Technical Session Held 8/17/00).

[251]   Since Covad raised cooperative, or acceptance, testing in the "loop quality" section
         of its comments, we address its allegations in Section II.D.2.b, below.

[252]   D.T.E. Evaluation at 309.

[253]   VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4357-4358 (Transcript of
         Technical Session Held 8/17/00); VZ-MA Application, Appdx. E, Vol.24, Tab 408
                                                                        (continued...)

MA's LST procedures.

The Department's directives with respect to line sharing over fiber-fed loops are

untested. In fact, the Department is unaware of any other state commission in a Verizon

jurisdiction ordering Verizon to make available similar tariffed offerings.[254] In concluding that

VZ-MA takes appropriate steps to accommodate CLEC requests for spare copper loops, we

did not rely on an as-yet-unfiled tariff. Rather, we were persuaded that VZ-MA uses its best

efforts when confronted with a "no facilities" situation.[255]

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[253](...continued)
> (VZ-MA Response to Information Request DTE 2-14). Exhibit F to VZ-MA's May
> checklist affidavit indicates that VZ-NY has performed LSTs since at least December
> 1999 (and possibly as early as July 1999). In the same affidavit, VZ-MA states that it
> agreed to import into Massachusetts the same policies and procedures determined in the
> New York DSL collaborative sessions (of which exhibit F is an example). VZ-MA
> Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶¶ 223-224, Exh. F (VZ-MA May
> Checklist Aff.). It is possible that Verizon began LSTs in Massachusetts last year, as it
> did in New York; however, for confirmation of the exact date, the Department
> recommends that the FCC make this request directly of VZ-MA.

[254] On October 19, 2000, VZ-MA filed a motion for reconsideration with respect to our
"plug and play," unbundled packet switching directives (arguing instead that it should
be permitted to file a proposed tariff in which it deploys, installs, and maintains line
cards at remote terminals for CLECs as opposed to CLECs owning such line cards).

[255] As noted in our Evaluation, VZ-MA is not required to build copper plant for CLECs.
We assume that the DOJ is not advocating such a requirement, which would be an
unprecedented prerequisite for § 271 approval. Thus, it is only appropriate to consider
what action VZ-MA takes when faced with a "no facilities" situation. Based on our
record, we found VZ-MA's response to be adequate and appropriate. D.T.E.
Evaluation at 303-304.

b.   Loop Quality

i.   Discussion

According to Covad, VZ-MA's own data indicate that 44 percent of the loops VZ-MA

provides to Covad are non-functioning.[256] Covad disagrees with VZ-MA's contention that

CLECs accept loops that do not fit particular technical parameters and then open trouble tickets

on those loops. Covad argues that it submits trouble tickets to VZ-MA because the loops VZ-

MA provisioned to it do not work. According to Covad, it pre-qualifies its loops through VZ-

MA to ensure that the loops its orders will support the xDSL service Covad seeks to offer.[257]

Covad also disputes VZ-MA's assertion that Covad accepts loops and then files trouble

tickets. According to Covad, "[i]f, as [VZ-MA] contends, Covad is accepting loops that don't

work, then the acceptance testing process doesn't work . . . ."[258] Specifically, Covad notes

that it has no way of knowing where on the loop the VZ-MA technician is plugging in test

equipment during the acceptance testing process, and that if the loop is not tested at the

network interface device ("NID"), the entire loop has not been tested and may be faulty.[259]

The Department is not persuaded by Covad's arguments. First, Covad is incorrect

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[256]   Covad Comments at 16.

[257]   Id. at 17.

[258]   Id. at 17-18.

[259]   Id. at 18.

when it states that "at least 44% of the loops [VZ-MA] delivered to Covad were non-functioning loops."[260] Covad asserts that the importance of this "fact" cannot be overstated. Ironically, it appears that Covad is overstating the facts. According to VZ-MA, Covad reported installation troubles within 30 days of an installation (captured by PR-6-01) during April through June, 2000, for **Begin Proprietary***************End Proprietary** of its completed installations.[261] The figure of "at least" 44 percent of loops with a found "trouble" cited by Covad does not represent 44 percent of all loops provisioned to Covad but, rather, **Begin Proprietary****************End Proprietary** of all loops VZ-MA provisioned to Covad during this three month period. This figure is a far cry from 44 percent of the loops delivered by VZ-MA to Covad.

Second, we note that Covad never raised concerns about the acceptance testing process (e.g., lack of testing at the NID) before us. Third, Covad chose not to challenge statements made by VZ-MA during our § 271 proceeding about CLECs accepting loops that do not support the service the CLEC intends to offer over them. In its comments to the FCC, Covad questions why it would accept a non-working loop,[262] but in comments filed with the Department, Covad acknowledged doing just that: "If we do not accept a loop because of a

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[260] Covad Comments at 16.

[261] VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 102 (VZ-MA August Supplemental Checklist Aff.)

[262] Covad Comments at 51-52.

provisioning problem caused by [VZ-MA], the loop falls into a black hole between the RCCC

(provisioning center) and the RCMC (maintenance center). . . The only way we can get a re-

dispatch on a bad loop is by accepting a bad loop or a loop that we didn't even get from the

RCCC and opening a trouble ticket with the RCMC."[263] This admission is telling. The

Department cannot and will not guess why Covad would accept a loop that does not support

the xDSL service it intends to offer over that loop. VZ-MA has posited that CLECs want to

"lock in" a loop, a claim we note that no CLEC has challenged.[264] While we cannot say --

with any assurance -- why a CLEC would do so, we can say that ascribing the consequence of

a CLEC business decision to a purported VZ-MA failure appears unwarranted. Fourth, the

Department does not agree that a "trouble" on a loop equals a non-functioning loop, as Covad

contends. VZ-MA stated that some CLECs will accept a loop and then open a trouble ticket to

have VZ-MA perform work on that loop to meet certain technical specifications (e.g., faster

transmission speed).[265] Finally, Covad fails to make the obvious connection between CLECs

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[263]   VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶ 65 (Covad
         Szafraniec/Katzman Decl.). The DOJ sought post-December 1999 information from
         the Department to support our conclusion that some CLECs accept loops that, absent
         additional VZ-MA work, will not support the level of service the CLEC seeks to offer.
         DOJ Evaluation at 8-9 n.30. This Covad declaration, filed with the Department in July
         2000, appears responsive to the DOJ's request.

[264]   VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4353-4354 (Transcript of
         Technical Session Held 8/17/00).

[265]   D.T.E. Evaluation, Appdx. F (VZ-MA Response to Record Request 323); see also VZ-
                                                                          (continued...)

accepting loops they know or should know will not support the level of service they intend to

offer and what effect that will have on the number of trouble tickets submitted for newly

provisioned loops.

Digital Broadband argues that during August through September, 2000, 19.5 percent of

Digital Broadband's xDSL loop orders passed the initial remote cooperative testing at the time

of loop turnover but did not pass subsequent testing when Digital Broadband performed the

installation at the customer premises.[266] According to Digital Broadband, there are several

possible explanations for this occurrence: a resistive or voltage fault, or VZ-MA alteration of

the loop subsequent to the initial cooperative testing and before the time of installation.[267]

Again, Digital Broadband is making these claims for the first time in its comments to the FCC.

The Department is unable to comment upon these assertions because Digital Broadband has not

provided us with any supporting documentation.

ii.   Conclusions

In its comments to the FCC, Covad dramatically overstates the number of its loops that

experience troubles within 30 days of provisioning. The accurate number, provided above, is

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[265](...continued)
    MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 139 (VZ-MA August Supplemental
    Checklist Aff.).

[266]   ALTS Comments, McMillan Decl. at ¶ 7.

[267]   Id. at ¶ 10.

a fraction of the 44 percent it claims and is not indicative of discriminatory behavior by VZ-MA. Covad's complaint of a "broken" acceptance testing process comes too late for the Department's consideration. In addition, statements made by Covad's experts before us contradict the position it has taken before the FCC (i.e., it does not accept loops that would not support the level of xDSL service it intends to offer). Finally, Digital Broadband made claims about the inadequacies of VZ-MA's acceptance testing process. Unfortunately, it decided not to make these claims in our forum; thus, we are unable to render any recommendation as to their validity.

In its evaluation, the DOJ notes that several CLECs deny that they are improperly accepting loops but, instead, attribute fault to VZ-MA.[268] In support of these allegations, the DOJ cites to Covad's, Digital Broadband's, NAS's, and Rhythms' FCC comments.[269] For the reasons provided above, we do not afford any weight to Covad's or Digital Broadband's allegations. Moreover, as mentioned earlier, NAS chose not to participate in our proceeding; thus, like Digital Broadband, we have no record upon which to make a determination as to the validity of its claims. Lastly, although it had the opportunity,[270] Rhythms did not challenge VZ-MA's assertions regarding a lack of CLEC cooperative testing during our § 271

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[268]   DOJ Evaluation at 12 n.45.

[269]   Id.

[270]   See Rhythms Comments at 32 ("Upon hearing this allegation during the state proceeding, Rhythms verified that it performs acceptance testing . . . .")

investigation. Again, we simply do not have the information in our record to make any

recommendation with respect to this carrier. In questioning VZ-MA's xDSL performance, it

appears to the Department that the DOJ is relying upon CLEC allegations that (a) are being

made by D.T.E. 99-271 participants for the first time in their FCC comments, or (b) are being

made by CLECs that never sought to participate in D.T.E. 99-271. We base our

recommendation upon information contained in our record.

c.   Maintenance and Repair

i.   Discussion

Covad argues that VZ-MA's July 2000, data show that CLEC customers waited nearly

a day longer than VZ-MA's retail customers to have their service restored, and that this level

of performance is not comparable to that which the FCC considered to be reasonable in

SWBT's § 271 application.[271] According to Covad, VZ-MA attributes the disparity in

performance to "no access" situations (i.e., VZ-MA experiences "no access" issues for only

three percent of its retail customers compared to almost 60 percent of CLEC customers).[272]

Covad agrees that "no access" is a problem and urges a collaborative solution. One such

solution, according to Covad, is to provide CLEC customers with a repair appointment

window of a few hours, like VZ-MA's retail customers. Covad argues that VZ-MA should

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[271]   Covad Comments at 20.

[272]   Id.

provide nondiscriminatory appointment windows, something that Covad claims it has sought

unsuccessfully from VZ-MA.[273]

Rhythms states that VZ-MA's "no access to CLEC customers" argument is not

applicable to Rhythms, which has a network operating center open seven days a week to assist

VZ-MA with customer access situations. In addition, Rhythms notes that it does not decline

Saturday appointments nor does it accept repair times only from 9:00 a.m. to 5:00 p.m.[274]

Rhythms also argues that VZ-MA inconsistently excludes "no access" situations in calculating

its maintenance and repair performance metrics; therefore, it is difficult for Rhythms to

determine which metrics are affected by the "no access" issue.[275] Finally, Rhythms notes that

it was Verizon that initially proposed its performance metrics, which were later evaluated by

the collaborative participants and approved by NYPSC and, in turn, by this Department.

Given Verizon's involvement in the metric development process, Rhythms argues that it is

unacceptable for VZ-MA now to claim that the metrics are not an appropriate measure of its

performance.[276]

Finally, the DOJ asks that the Department clarify to what extent we relied upon certain

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[273]   Id. at 21-22.

[274]   Rhythms Comments at 31.

[275]   Id. at 31-32.

[276]   Id. at 34, Williams Decl. at ¶ 31.

of VZ-MA's process improvements and VZ-MA's studies of POTS lines in our evaluation of

VZ-MA's maintenance and repair performance.[277]

ii.   Conclusions

Although Covad agrees with VZ-MA that there is a problem with VZ-MA's access to

CLEC customers, Covad failed to mention its proposed solution -- directing VZ-MA to offer

CLECs repair appointments lasting just a few hours as opposed to all day -- during our

proceeding. Therefore, although Covad claims it has sought, unsuccessfully, to have the

repair appointment window shortened, the Department has no record of this Covad request,

nor of VZ-MA's purported refusal to accommodate the request. In addition, Covad's witness

testified that he was aware of conversations between Covad and VZ-MA to develop a process

addressing the no access situations in the maintenance and repair context, similar to that in

place for provisioning (i.e., the ILEC technician calls the CLEC when there is a no access

condition so that the CLEC can attempt to obtain access for the ILEC).[278] If, in fact, there is

such an operational concern, the Department strongly encourages the establishment of such a

collaborative process to reduce unnecessary dispatches.

Other than Rhythms indicating in its FCC comments that it accepts Saturday repair

appointments and appointments outside of the standard 9:00 a.m. to 5:00 p.m. period, no

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[277]   DOJ Evaluation at 8 n.30.

[278]   VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4376 (Transcript of Technical
Session Held 8/17/00).

CLEC has contested VZ-MA's assertion that CLEC behavior adversely affects several of its

maintenance and repair metrics (e.g., declining Saturday appointments, inability to isolate

accurately a source of trouble on a loop, accepting loops that require additional work by VZ-

MA technicians).[279]

Rhythms argues that it is unacceptable for VZ-MA to contest the very performance

measurements it proposed. It is the Department's understanding that the performance metrics

are developed and refined in a collaborative manner, under the oversight of the NYPSC, and

that this process may require a lengthy period of time.[280] It is only natural that not all of the

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[279]   See D.T.E. Evaluation at 314-322 for additional discussion.

[280]   In its evaluation, the DOJ also argues that VZ-MA has not developed reliable
performance measures with associated benchmarks for xDSL services. As support for
this contention, the DOJ points to VZ-MA's claim that its xDSL metrics produce
"'false positives' (i.e., that due to issues involving definition and implementation, the
reported performance appears to be discriminatory but in fact is nondiscriminatory)."
DOJ Evaluation at 14-16, see also id. at 8-9 n.30. As we noted above, these
measurements are developed through a collaborative process under the supervision of
the NYPSC and are self-executing. The DOJ contends that it is unreasonable for VZ-
MA to look behind the actual performance numbers in a § 271 proceeding, even when
such numbers are distorted by inappropriate CLEC practices. We respectfully
disagree. There is no indication in our record that VZ-MA knew at the time the xDSL
metrics were being developed in New York that such CLEC practices could skew its
performance. Also, as the DOJ is aware, performance measures are not static and may
require reevaluation as the BOC and its competitors gain experience with them. In
addition, it is our understanding that Verizon cannot unilaterally change the definition
or calculation of metrics. That certain xDSL metrics may require modification on a
prospective basis should not prevent VZ-MA from explaining its past performance.
Finally, while the accuracy of metrics is unquestionably important, determination of
checklist compliance ultimately must be based on a thorough assessment of actual
(continued...)

factors outside of Verizon's control would be apparent to Verizon when it proposed certain

metrics (e.g., when VZ-MA began offering weekend repair appointments earlier this year, VZ-

MA reasonably did not anticipate that many CLECs would reject the offer of a Saturday

appointment but prefer instead a Monday appointment). Indeed, VZ-MA indicated that, like

CLECs, it resolves approximately half of its UNE-loop trouble reports with a determination of

a problem with customer-provided equipment or "no trouble found." However, unlike

CLECs, VZ-MA resolves a substantial number of these troubles without a dispatch, and VZ-

MA expected similar troubleshooting by the CLECs with their customers.[281] Contrary to

Covad's claims (and this deserves emphasis), the Department does not believe CLECs engage

in certain practices deliberately to skew VZ-MA's performance data. Rather, as we noted in

our Evaluation (and restate here), CLECs simply may have different business plans (e.g.,

business and not residential customers), and that these differences have a tendency to affect

several of VZ-MA's metrics. It was not our intent to ascribe any base or devious motives to

any CLEC.

The DOJ requests that the Department explain whether we used VZ-MA's studies of

POTS lines to support our conclusion with respect to VZ-MA's maintenance and repair

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[280](...continued)
performance.

[281]   D.T.E. Evaluation at 274-275, citing VZ-MA Application, Appdx. B, Vol. 34a-b, Tab
443 (VZ-MA Response to Information Request DTE 5-20).

performance.[282] The Department assumes the DOJ is referring to our comment that VZ-MA's

studies show a CLEC preference for Monday, rather than weekend, repair appointments.[283]

While VZ-MA did perform a study of the effect of CLEC-rejected weekend appointments for

non-xDSL loops, it undertook the same study for just xDSL loops. In its August supplemental

checklist affidavit, VZ-MA stated that "like the experience described above for UNE POTS,

other repair measurements for [xDSL] services are similarly affected by the incidence of

[data]LECs requesting Monday appointments when [VZ-MA] is offering weekend

appointments. In June, for example, 68% of the repairs from Friday were requested for

Monday appointments, while only 11% of the measured 'retail comparison group' put over

their repair appointments to Monday."[284] It is clear to the Department that this VZ-MA study

was of just xDSL, not POTS, loops. Later in its comments, the DOJ questions the accuracy of

VZ-MA's study because "CLECs deny that they avoid weekend repair appointments."[285]

Rhythms is the only CLEC that has affirmed, albeit in its FCC comments, that it does indeed

accept offered weekend repair appointments from VZ-MA. Therefore, we respectfully

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[282]   DOJ Evaluation at 8 n.30, citing D.T.E. Evaluation at 320.

[283]   See D.T.E. Evaluation at 320.

[284]   VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 138 (VZ-MA August
         Supplemental Checklist Aff.). See also D.T.E. Evaluation at 314-315.

[285]   DOJ Evaluation at 12, citing Rhythms Comments at 31-32, Covad Comments at 20-22,
         NAS Comments at 3-4.

disagree with the DOJ's use (in footnote 43 of the DOJ Evaluation) of FCC comments filed by

Covad and NAS (arguing for shortened repair appointments) to question the validity of this

VZ-MA study.

The DOJ also has asked the Department to clarify whether we relied upon new and

unproven process improvements to support our findings on VZ-MA's maintenance and repair

performance.[286] Again, although the exact reference is not specified, the Department gathers

that the DOJ is referring to our statement that VZ-MA is providing specialized training to its

xDSL technicians and has implemented a maintenance cooperative testing process to assist

CLECs.[287] The DOJ is concerned that these VZ-MA steps are unproven. They are not. In its

May checklist affidavit, VZ-MA noted that it provides specialized training to its xDSL

workforce.[288] Although our record does not contain the exact date when such training began,

even assuming VZ-MA did not begin the training before May, five months (from May through

October 2000) in the realm of advanced services is not an inappropriately brief period of

time.[289] Finally, cooperative testing for maintenance and repair is also not new. While VZ-

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[286]   DOJ Evaluation at 8 n.30, citing D.T.E. Evaluation at 315.

[287]   D.T.E. Evaluation at 315.

[288]   VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 208 (VZ-MA May Checklist
        Aff.).

[289]   Exhibit F to VZ-MA's May checklist affidavit, indicates that such training of VZ-NY
        xDSL field technicians occurred no later than December 1999. VZ-MA states in this
                                                                        (continued...)

MA stated in its May checklist affidavit that it "has instituted a cooperative testing process,"

VZ-MA neglected to mention the date it unveiled this process in this filing.[290] Again, we note

that VZ-MA's statements in our record indicate this process has been in place for at least five

months.[291]

3. Line Sharing

a. Discussion

ALTS, Covad, Rhythms, and WorldCom argue that VZ-MA fails to meet its line

sharing obligations, thus warranting an FCC finding of non-compliance with this checklist

requirement. Covad disputes VZ-MA's explanation for the delay in completing the necessary

central office work to permit line sharing.[292] According to Covad, VZ-MA was to have

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[289](...continued)

affidavit that it will adopt in Massachusetts the same operating policies and procedures
determined in the New York DSL collaborative sessions, expressly acknowledging
the "Bell Atlantic DSL Plan" appended to this affidavit as exhibit F. VZ-MA
Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶¶ 223-224, Exh. F (VZ-MA May
Checklist Aff.).

[290] Id.

[291] In discussions with Department staff, VZ-MA representatives indicated that the
cooperative process for maintenance and repair has been in place in Massachusetts since
the beginning of this year. However, the Department was unable to locate this
information in our record. If the FCC seeks confirmation of this date (i.e., January
2000), the Department suggests it issue that request directly to VZ-MA.

[292] Covad Comments at 28.